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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,071	02/20/2002	Roland Neubert	20959/1680 (P 54746)	6986
7590 03/07/2005		EXAMINER		
Joseph M. Noto			NILAND, PATRICK DENNIS	
NIXON PEAB	ODY LLP			
Clinton Square			ART UNIT	PAPER NUMBER
P.O. Box 31051			1714	
Rochester, NY 14603-1051			DATE MAILED: 03/07/2009	.

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
	10/079,071	NEUBERT ET AL.			
Office Action Summary	Examiner	Art Unit			
	Patrick D. Niland	1714			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.1: after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply - If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a reply be time y within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from the cause the application to become ABANDONE!	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
Status					
 1) ⊠ Responsive to communication(s) filed on 24 Ja 2a) ⊠ This action is FINAL. 2b) □ This 3) □ Since this application is in condition for alloware closed in accordance with the practice under E 	action is non-final. nce except for formal matters, pro				
Disposition of Claims					
4) ⊠ Claim(s) 1-9 and 12-34 is/are pending in the a 4a) Of the above claim(s) is/are withdraw 5) □ Claim(s) is/are allowed. 6) ⊠ Claim(s) 1-9 and 12-34 is/are rejected. 7) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/o	wn from consideration.				
Application Papers					
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Examine 11.	epted or b) objected to by the liderawing(s) be held in abeyance. See tion is required if the drawing(s) is obj	e 37 CFR 1.85(a). jected to. See 37 CFR 1.121(d).			
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:				

Application/Control Number: 10/079,071

Art Unit: 1714

1. The amendments of 1/24/05 have been entered. Claims 1-9 and 12-34 are pending.

Page 2

- 2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/24/05 has been entered.
- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. Claims 1-9 and 12-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5356951 Yearn et al. in view of WO 00/61073 Blackwell et al., DE 3502594 A1 Michl et al., US Pat. No. 4503169 Randklev, and US Pat. No. 4668712 Hino et al..

Yearn et al. discloses particulate composite filler of mean particle size of 5-50 micrometers (column 4, lines 21-24) and tooth filling material containing monomer and the composite filler. Yearn et al. does not disclose the instantly claimed restriction on amount of particles with a size less than 10 micrometers. See column 2, lines 25-41; column 3, lines 40-68; column 4, lines 1-2 and 11-68; column 5, lines 6-9; and the remainder of the document. The examples use the instantly claimed amount of polymerization initiator, which amounts are those commonly employed in polymerization of unsaturated monomers.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed particle size limitations of claims 1 and 2 because

Art Unit: 1714

Blackwell et al. discloses the benefits of using such size ratios (page 3, line 21 to page 4, line 26) and these benefits resulting from the particle size limitations of Blackwell would have been expected in the compositions of Yearn. The benefits of the larger particle size distribution of Blackwell are generic to fillers and would have also been expected of the composite fillers of the patentee.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the ytterbium fluoride of the instant claim 8 and 18 because Yearn desires the use of roentgenographic compounds in their compositions and Michl et al. shows ytterbium fluoride to be a particularly useful roentgenographic compound for use in filllings and its properties would have been expected in the composition of Yearn. Use of such fillers is contrary to transparency argued by the applicant.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed precipitated mixed oxides of the instant claims 9 and 22-25 because Yearn teaches that any glass powders can be used at column 3, lines 44-68 and column 4, lines 11-12 and 21-32 and such precipitated mixed oxides would have been expected to give their known properties, as taught by Randklev, to the composition of Yearn, who teaches that known additives may be used.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the layered silicates, i.e. bentonite clays, of the instant claims in the composition of Yearn because they would have been expected to give their known properties, as taught by Hino et al., to the composition of Yearn, who teaches that known additives may be used.

Application/Control Number: 10/079,071

Art Unit: 1714

The applicant's arguments are not persuasive for the reasons stated above and because there continues to be no showing of any alleged unexpected results in a manner commensurate in scope with the instant claims and the cited prior art. The applicant's argument with regard to transparency is not persuasive because the instant claims encompass the use of non-transparent fillers. It is not seen that the compositions above are not "polishable" as all such compositions are expected to be "polishable". The cited prior art predicts lowered shrinkage from using the above discussed filler size distribution as well as other enhancements of the physical properties of the cured compositions. The instant claims recite "comprising" and therefore encompass any additional ingredients of the cited prior art. Blackwell is cited for its teaching of the properties which result from the disclosed particle size distribution and these properties are attributed to the particle size distribution without regard to the identity of the filler. They are therefore expected of the composite fillers of Yearn. Shrinkage control and smoothness, which would appear to be related to polishability, i.e. it would require less polishing, e.g. less abrasion, to give the desired final outcome, are obtained by Yearn (abstract).

Page 4

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/079,071

Art Unit: 1714

Patrick D. Niland Primary Examiner Art Unit 1714 Page 6